

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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J&J SPORTS PRODUCTIONS, INC.,

Plaintiff,

-against-

BYZA RESTAURANT CORP. d/b/a
BYZANTIO CAFÉ & BAR, PETER PETERS,
and GEORGIA PETERS,

Defendants.

X

Appearances:

For the Plaintiff:

PAUL J. HOOTEN, ESQ.
Paul J. Hooten & Associates
5505 Nesconset Highway, Suite 203
Mt. Sinai, NY 11766

For the Defendants:

WILLIAM M. SPANAKOS, ESQ.
Spanakos & Spanakos, Esqs.
7207 Fort Hamilton Parkway
Brooklyn, NY 11228

BLOCK, Senior District Judge:

After defendants failed to appear in this action, plaintiff moved for a default judgment. *See* Docket Entry # 7 (Motion). Defendants subsequently appeared through counsel and moved to set aside plaintiff's service of the summons and complaint. *See* Docket Entry # 10 (Motion). The Court referred defendants' motion to the magistrate judge assigned to the case; on February 17, 2010, Magistrate Judge Carter issued a Report and Recommendation ("R&R") recommending that the Court grant defendants' motion, which it construed as a Fed. R. Civ. P 12(b)(5) motion to dismiss, because plaintiff failed to properly effectuate service of process on any defendant. *See* R&R at 10. The R&R also stated that failure to object within fourteen days would preclude appellate review. *See id.* Attorney for plaintiff was electronically notified of the R&R on February 18, 2010; no objections have been filed.

If clear notice has been given of the consequences of failure to object, and there are

no objections, the Court may adopt the R&R without *de novo* review. *See Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”). The Court will excuse the failure to object and conduct *de novo* review if it appears that the magistrate judge may have committed plain error, *see Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000); no such error appears here.

The Court adopts the findings set forth in the R&R. Accordingly, defendants’ motion is granted, and the complaint is dismissed.

SO ORDERED.

FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
March 10, 2010